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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,761	01/23/2004	Andrew Halliday	67642	7547
48940	7590	06/22/2007	EXAMINER	
FITCH EVEN TABIN & FLANNERY			ALEXANDER, REGINALD	
120 S. LASALLE STREET			ART UNIT	PAPER NUMBER
SUITE 1600			1761	
CHICAGO, IL 60603-3406			MAIL DATE	
			06/22/2007	
			DELIVERY MODE	
			PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/763,761	HALLIDAY ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Reginald L. Alexander	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 14 May 2007.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-3,6,7,9-11 and 13-21 is/are pending in the application.
- 4a) Of the above claim(s) 10,11 and 13 is/are withdrawn from consideration.
- 5) Claim(s) 1-3,6,7,9,14 and 18-21 is/are allowed.
- 6) Claim(s) 15-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Objections***

Claim 19 is objected to because of the following informalities: The claim is dependent upon itself. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over EPO 1042978 in view of Fond '702.

There is disclosed in the European reference a cartridge containing one or more beverage ingredients and being formed from substantially air and water-impermeable materials, the cartridge comprising a disc-shaped outer member 20 having a central axis, an interior storage chamber containing the ingredients, a hollow inwardly directed cylindrical extension (figs. 1 and 2) centered on the central axis, an upper face positioned radially outward from the central axis, an outlet/inlet 28 axially aligned with the extension, and an inlet/outlet 26 aligned with the upper face on an opposite side of the cartridge.

There is disclosed in Fond a disc-shaped cartridge 1 containing one or more beverage ingredients 5 and being formed from air and water impermeable materials, the

cartridge comprising a storage chamber, wherein the aspect ratio of the vertical height of the storage chamber to the breadth of the chamber is between 0.10 and 0.43 (see col. 2, lines 45-50).

It would have been obvious to one skilled in the art to modify the cartridge of EPO 1042978 with that taught in Fond, for the purpose of constructing a beverage cartridge of such size and shape so as to be compatible to different size coffee machines.

***Allowable Subject Matter***

Claims 1-3, 6, 7, 9, 14 and 18-21 are allowed.

***Response to Arguments***

Applicant's arguments filed 14 May 2007 have been fully considered but they are not persuasive. Applicant argues that EP 1042978 fails to disclose a cylindrical extension on an opposite side of the cartridge from an inlet. Applicants recitation of an inlet and outlet can be structurally met by either of the openings shown in EP 1042978. Taking this into consideration, the hollow inwardly directed member (not labeled) shown in the drawings adjacent to inlet/outlet 26, meets the claimed limitations.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Reginald L. Alexander  
Primary Examiner  
Art Unit 1761

rla  
12 June 2007